RECORD AND BRIEFS

16-460

Supreme Court, U.S.
FILED
OCT - 6 2016
OFFICE OF THE CLERK

No. ___

IN THE
Supreme Court of the United States

STEPHANIE C. ARTIS,
Petitioner,
v.
DISTRICT OF COLUMBIA,
Respondent.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

Donald M. Temple
TEMPLE LAW OFFICES
1101 15th Street NW
Suite 910
Washington, DC 20005

Matthew S. Hellman
Adam G. Unikowsky
Counsel of Record
Mark P. Gaber
JENNER & BLOCK LLP
1099 New York Ave. NW
Suite 900
Washington, DC 20001
(202) 639-6000
aunikowsky@jenner.com

Counsel for Petitioner

QUESTION PRESENTED

Section 1367 of Title 28 authorizes federal district courts in certain circumstances to exercise supplemental jurisdiction over claims arising under State law.

Section 1367 further provides that "[t]he period of limitations for any [such] claim . . . shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d).

The question presented is whether the tolling provision in § 1367(d) suspends the limitations period for the state-law claim while the claim is pending and for thirty days after the claim is dismissed, or whether the tolling provision does not suspend the limitations period but merely provides 30 days beyond the dismissal for the plaintiff to refile.

TABLE OF CONTENTS

QUESTION PRESENTED i
TABLE OF AUTHORITIES iv
OPINIONS BELOW 1
JURISDICTION 1
STATUTORY PROVISIONS INVOLVED 1
INTRODUCTION 2
REASONS TO GRANT THE PETITION 7
I. The Lower Courts Are Split on the Meaning of "Tolling" in § 1367(d). 8
A. The High Courts of Maryland and Minnesota, Along With The Sixth Circuit, Have Held that § 1367(d)'s Tolling Rule Suspends the Limitations Period, Pausing Its Clock Until Thirty Days After the State-Law Claim Is Dismissed 8
B. The High Courts of the District of Columbia and California Have Adopted the Grace Period Approach, Which Provides Only Thirty Days to Refile Suit 11
II. The Question Presented Is Important. 14
III. The D.C. Court of Appeals' Decision is Wrong.. 16
CONCLUSION 20

APPENDIX TO THE PETITION

Appendix A

Artis v. District of Columbia, 135 A.3d 334 (D.C. 2016) 1a

Appendix B

Order Granting Defendant's Motion To Dismiss or, in the Alternative, for Summary Judgment, *Artis v. District of Columbia*, Case No. 2014 CA 005275 B (D.C. Super. Ct. Jan. 29, 2015) 12a

Appendix C

Order Denying Petition for Rehearing, *Artis v. District of Columbia*, No. 15-CV-243 (D.C. July 20, 2016) 19a

TABLE OF AUTHORITIES

CASES

American Pipe & Construction Co. v. Utah, 414 U.S. 538 (1974) 17

Artis v. District of Columbia, 51 F. Supp. 3d 135 (D.D.C. 2014) 6

Beck v. Prupis, 162 F.3d 1090 (11th Cir. 1998) 12

Berke v. Buckley Broadcasting Corp., 821 A.2d 118 (N.J. Ct. App. 2003) 13

Chardon v. Fumero Soto, 462 U.S. 650 (1983) 9, 17

City of Los Angeles v. County of Kern, 328 P.3d 56 (Cal. 2014) 12, 13

CTS Corp. v. Waldburger, 134 S. Ct. 2175 (2014) 17

Dahl v. Eckerd Family Youth Alternatives, Inc., 843 So. 2d 956 (Fla. Dist. Ct. App. 2003) 13

Goodman v. Best Buy, Inc., 777 N.W.2d 755 (Minn. 2010) 9, 10

Gottschalk v. Woods, 766 S.E.2d 130 (Ga. Ct. App. 2014) 13

Guaranty Trust Co. of New York v. York, 326 U.S. 99 (1945) 16

Harter v. Vernon, 532 S.E.2d 836 (N.C. Ct. App. 2000) 13

Hedges v. Musco, 204 F.3d 109 (3d Cir. 2000) 12

Jinks v. Richland County, 538 U.S. 456 (2003) .. 14, 15

Juan v. Commonwealth, No. 99-032, 2001 WL 34883536 (N. Mar. Is. Nov. 19, 2001) 13

Raygor v. Regents of University of Minnesota, 534 U.S. 533 (2002) 17, 18

Seabrook v. Jacobson, 153 F.3d 70 (2d Cir. 1998) 12

Smith v. Erie County Sheriff's Department, No. E-15-028, __ N.E.3d __ 2016 WL 618112 (Ohio Ct. App. Feb. 12, 2016) 13, 15

Turner v. Knight, 957 A.2d 984 (Md. 2008) 6, 8, 9

United States v. Ibarra, 502 U.S. 1 (1991) 17

In re Ventrue Inc. Marketing & Sales Practices Litigation, 719 F.3d 474 (6th Cir. 2014) 10, 11, 15

STATUTES

28 U.S.C. § 1257 1

28 U.S.C. § 1367(a) 1, 2

28 U.S.C. § 1367(c) 2

28 U.S.C. § 1367(c)(3) 2, 6

28 U.S.C. § 1367(d) ..... *passim*

28 U.S.C. § 1367(e) 4, 13

42 U.S.C. § 2000e-5 5

48 U.S.C. § 1824(a) 13

District of Columbia False Claims Act, D.C. Code § 2-381.04 5

District of Columbia Whistleblower Act, D.C. Code § 1-615.54 5

LEGISLATIVE MATERIALS

H.R. Rep. No. 101-734 (1990), *as reprinted in* 1990 U.S.C.C.A.N. 6860 18

OTHER AUTHORITIES

Black's Law Dictionary (8th ed. 2004) 16

Fed. R. App. P. 4(a) 19

Complaint, *Artis v. District of Columbia*, No. 11-cv-02241-JEB (D.D.C. Dec. 16, 2011), ECF No. 1 5

OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals is reported at 135 A.3d 334, and is reprinted in the Appendix to the Petition ("Pet. App.") at 1a. The opinion of the Superior Court for the District of Columbia is unreported and is reprinted at Pet. App. 12a.

JURISDICTION

The District of Columbia Court of Appeals issued its opinion on April 7, 2016. Petitioner's timely petition for panel and *en banc* rehearing was denied on July 20, 2016. The jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. § 1257.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1367(a) provides:

> Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

28 U.S.C. § 1367(d) provides:

> The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

INTRODUCTION

When a plaintiff brings claims in federal court over which the court has original jurisdiction, section 1367(a) of Title 28 authorizes the court to exercise supplemental jurisdiction over related state-law claims. But that grant of jurisdiction is not mandatory: a federal district court is authorized to "decline" to exercise jurisdiction over such state-law claims if certain statutory criteria are met. *See* 28 U.S.C. § 1367(c). Most commonly, if the court dismisses all of the plaintiff's federal claims, § 1367 allows the court to decline to exercise jurisdiction over the residual supplemental state-law claims. *Id.* § 1367(c)(3).

If a federal court dismisses a plaintiff's federal claims and then declines to exercise jurisdiction over state-law claims, the risk arises that the plaintiff will be unable to refile those state-law claims in state court because the statute of limitations on the state-law claims will have expired. To avoid that outcome, Congress enacted § 1367(d), which provides that "[t]he period of limitations for any [such] claim . . . shall be tolled while the claim is pending and for a period of 30

days after it is dismissed unless State law provides for a longer tolling period."

That tolling provision is the subject of a substantial and acknowledged conflict of authority. On one side of the conflict are courts that interpret the provision to mean that the limitations period is suspended during the pendency of the state-law claim in federal court and for an additional 30 days after its dismissal. Courts refer to this approach as the "suspension" approach. On the other side of the conflict are courts that interpret the provision to mean that the limitation period continues running during the pendency of the state-law claim in federal court, and that the plaintiff merely gets a 30-day grace period to refile the state-law claim in state court after it is dismissed by the federal court. Courts refer to this approach as the "grace period" or "extension" approach.

The two approaches yield two materially different limitations periods. Consider a plaintiff who is fired from her job on June 1, 2010. She files suit in federal court one year later, on June 1, 2011, alleging violations of Title VII as well as related state claims that carry a two-year statute of limitations. The district court dismisses the plaintiff's Title VII claim on June 1, 2013 on grounds inapplicable to the state-law claims, and declines to continue exercising supplemental jurisdiction over the state-law claims.

Under the suspension approach, the two-year limitations period for the state-law claims is suspended between June 1, 2011, and June 1, 2013, and then for an additional 30 days—until July 1, 2013. At that point, the limitations clock restarts, leaving the plaintiff with

an additional year—until July 1, *2014*—to refile in state court. By contrast, under the grace period approach, the limitations clock on the state-law claims continues to run while the federal claim is pending, and expires on July 1, 2012—a year before the federal court chose to decline jurisdiction over the state-law claims. Thus, under that approach, the plaintiff receives only a 30-day "grace period" to refile the state-law claims, which expires on July 1, *2013*—a year before the expiration of the limitations clock under the suspension approach.

In the decision below, the D.C. Court of Appeals adopted the "grace period" approach, joining the high court of California and numerous intermediate appellate courts.[1] By contrast, the high courts of Maryland and Minnesota, along with the Sixth Circuit, have adopted the "suspension" approach. This Court's review is warranted to resolve this conflict of authority on a recurring issue of federal law.

On the merits, the D.C. Court of Appeals' interpretation of § 1367(d) cannot be reconciled with the statutory text. Section 1367 says that the limitations period is "tolled" during the pendency of the action. The word "tolled" means "suspended." The courts that treat the limitations period as running during the pendency of the action are simply not "tolling."

For all these reasons and those presented below, Petitioner respectfully ask this Court to grant the petition.

---

[1] The District of Columbia is defined as a "State" for purposes of this statute. *See* 28 U.S.C. § 1367(e).

STATEMENT OF THE CASE

The District of Columbia hired Petitioner in August 2007 as a Department of Health code inspector. Pet. App. 2a. On April 17, 2009, Petitioner filed a discrimination claim against her supervisor and the Department of Health with the U.S. Equal Employment Opportunity Commission ("EEOC"), alleging unlawful discrimination. *Id.* Thereafter, Petitioner filed a number of additional grievances challenging various notices of proposed infractions against her and also alleged her supervisor violated other employee rights regulations. *Id.* On November 15, 2010, Petitioner was informed that the Department of Health had terminated her. In January 2011, she filed a grievance alleging that the termination was retaliation for her actions against her supervisor. *Id.*

Petitioner filed suit against the District of Columbia in the United States District Court for the District of Columbia on December 16, 2011, alleging that she was terminated in violation of Title VII, 42 U.S.C. § 2000e-5, and asserting claims under the District of Columbia Whistleblower Act, D.C. Code § 1-615.54, the District of Columbia False Claims Act, D.C. Code § 2-381.04, and for wrongful termination against public policy. *See* Complaint, *Artis v. D.C.*, No. 11-cv-02241-JEB (D.D.C. Dec. 16, 2011), ECF No. 1. At the time Petitioner filed her suit, "[t]here were nearly two years remaining on the statute of limitations" for her state-law claims. Pet. App. 4a.

On June 27, 2014, the district court granted summary judgment for Respondent on the Title VII claim, and declined to exercise supplemental jurisdiction over the remaining state claims, pursuant to 28 U.S.C. § 1367(c)(3). *See Artis v. D.C.*, 51 F. Supp. 3d 135, 141 (D.D.C. 2014). In doing so, the court noted that Petitioner's ability to refile her state claims would not be prejudiced, because § 1367(d) "provides for a tolling . . . during the period the case was here and for at least 30 days thereafter." *Id.* at 142.

On August 25, 2014—fifty-nine days after the district court dismissed her federal suit—Petitioner refiled in D.C. Superior Court. Pet. App. 3a. On January 29, 2014, the Superior Court granted Respondent's motion to dismiss, concluding that § 1367(d) required Petitioner to file her suit within 30 days of the federal court's dismissal of her state-law claims, and that her claims were thus time-barred. Pet. App. 3a-4a.

Petitioner appealed, and on April 7, 2016, the D.C. Court of Appeals affirmed. In its opinion, the court first observed that "the parties have advanced two respective positions which are consistent with the competing approaches that have evolved nationally relating to the tolling provision of the statute presented." Pet. App. 6a. The court noted that some courts have "adopt[ed] the 'suspension' approach . . . liken[ing] tolling to a 'clock that is stopped and then restarted.'" Pet. App. 6a-7a (citation omitted) (quoting *Turner v. Knight*, 957 A.2d 984, 991 (Md. 2008)). The court noted the other approach "is that the statute provides a thirty-day 'grace period.'" Pet. App. 7a.

The court concluded that it would "consider the grace period approach to be more consistent with the Act's legislative history and intent. And although both interpretations of the tolling provision are reasonable, we also find that that 'grace period' approach better accommodates federalism concerns." Pet. App. 9a. The court observed that Congress needed to be clearer if it wished to "invade a historic state power by altering state statutes of limitations." *Id.*

Petitioner sought panel rehearing and rehearing *en banc*, which the court denied on July 20, 2016. Pet. App. 19a.

REASONS TO GRANT THE PETITION

There is a well-recognized and entrenched conflict of authority on whether the suspension approach or the grace period approach reflects the correct interpretation of § 1367(d). The Sixth Circuit, along with the high courts of Maryland and Minnesota, has adopted the suspension approach. The high courts of California and now the District of Columbia have adopted the grace period approach.

The Court should grant certiorari in this case to resolve the conflict. The question presented is important and recurs frequently—it determines the limitations period for any state-law claim over which a federal court declines supplemental jurisdiction. As this Court has explained, Congress intended § 1367 to provide a clear and comprehensive set of rules to govern supplemental jurisdiction over state-law claims in federal court. That clarity has been frustrated by the split of authority on the basic issue of how long a

plaintiff has to refile her state-law claims in the event that they are dismissed by the federal court. Moreover, further percolation is unnecessary—the arguments on both side of the split have been fully aired by numerous courts. And this case is an ideal vehicle because its outcome turned entirely on the decision of which interpretation to adopt.

Finally, the decision below warrants review because it is wrong. The grace period approach adopted by the D.C. Court of Appeals is contrary to the plain text of the statute, inconsistent with the manner in which this Court has long understood "tolling" to work, and at odds with the policy choices Congress made in § 1367.

I. The Lower Courts Are Split on the Meaning of "Tolling" in § 1367(d).

A. The High Courts of Maryland and Minnesota, Along With The Sixth Circuit, Have Held that § 1367(d)'s Tolling Rule Suspends the Limitations Period, Pausing Its Clock Until Thirty Days After the State-Law Claim Is Dismissed.

The high courts of Maryland and Minnesota, along with the Sixth Circuit, have adopted the suspension approach: they agree that the word "tolled" in § 1367(d) means that the limitations period is suspended while the state-law claim is pending, and that it begins to run again thirty days after the state-law claim is dismissed.

The Maryland Court of Appeals (Maryland's high court) adopted the suspension approach in *Turner v. Knight*, 957 A.2d 984 (Md. 2008). In *Turner*, the court

observed that "the courts are not in agreement as to which is the proper reading" with respect to § 1367(d). 957 A.2d at 990. The court concluded that "tolling" most commonly meant a suspension, noting that the common law defined a "'tolling statute' as '[a] law that interrupts the running of a statute of limitations in certain situations.'" *Id.* at 992 (quoting *Black's Law Dictionary* (8th ed. 2004)).

Moreover, the court cited this Court's decision in *Chardon v. Fumero Soto*, 462 U.S. 650 (1983), where the Court construed "the word 'tolling' to mean that, during the relevant period, the statute of limitations ceases to run." 462 U.S. at 652 n.1. The court reasoned that Congress "used the word 'tolled' without qualification, presumably aware of how that word had previously been interpreted and applied by the Supreme Court . . . and we can find nothing in the legislative history of the statute to indicate that it intended any other meaning." *Turner*, 958 A.2d at 992.

The Minnesota Supreme Court likewise rejected the grace period approach and adopted the suspension approach. *See Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 759 (Minn. 2010). The court expressly held that the suspension approach "is the only reasonable interpretation given the complete text of section 1367(d)." *Id.* at 760. That is so, the court reasoned, because the grace period approach only gives meaning to § 1367(d) if a condition precedent exists: "tolling occurs only if the period of limitations expires while the claim is pending in federal court or during the 30 days post-dismissal." *Id.* at 759-60. This cannot be correct, the court said, because "[t]he statute . . . uses

unconditional language: '[t]he period of limitations . . . *shall* be tolled.'" *Id.* at 760 (quoting 28 U.S.C. § 1367(d) (first bracket added) (emphasis in original)).

To illustrate, the Minnesota Supreme Court explained that the grace period approach requires § 1367(d) to be read as "the period of limitations . . . shall be tolled while the claim is pending and for a period of 30 days after it is dismissed [*if the period of limitations expires during the pendency of the claim in federal court or within 30 days after dismissal*]." *Id.* (emphasis and alterations in original). The court reasoned that this approach "creat[es] an ambiguity where none exists by reading missing words or conditions into the statute. Such reasoning would make any statute ambiguous." *Id.*

In so holding, the Minnesota court acknowledged other courts had adopted the grace period approach, but observed that "the courts rejecting the suspension-of-the-clock interpretation did not perform a textual analysis of the wording; rather, those courts rejected the interpretation for policy reasons." *Id.* at 761. "The fact that some state appellate courts have, for policy reasons, chosen a different statutory interpretation, does not dissuade us from reading the plain language of section 1367(d) and concluding that it unambiguously means that the running of the limitations period is suspended, and not merely the expiration of the limitations period." *Id.*

The Sixth Circuit reached the same conclusion in *In re Vertrue Inc. Marketing & Sales Practices Litigation*, 719 F.3d 474 (6th Cir. 2013). In *Vertrue*, an initial round of class action litigation resulted in the district

court dismissing the federal claims and declining to exercise supplemental jurisdiction over the remaining state-law claims. 719 F.3d at 477. Later, multiple class actions were filed raising additional federal claims along with the same state-law claims over which the previous federal court had declined jurisdiction. *Id.* Those cases were consolidated by a MDL Panel, and the defendant sought dismissal, contending that the state-law claims were untimely under § 1367(d)'s tolling provision because they had not been refiled within thirty days of dismissal. *Id.* at 479-80.

The Sixth Circuit reversed and held that § 1367(d) tolls the period by suspending it when the state-law claim is pending in federal court, to begin running again thirty days after dismissal of the state-law claim by the federal court. *Id.* at 481. The court reasoned that the district court's "approach fails to give any operative effect to § 1367(d) in a number of cases in which the state statute of limitations does not expire during the course of federal litigation." *Id.* The latter is so because the thirty-day grace period is meaningless if it runs concurrent to an unexpired limitations period. In conclusion, the Sixth Circuit noted that it was "persuaded that the suspension approach properly gives effect to both § 1367(d) and the state statute of limitations." *Id.*

B. The High Courts of the District of Columbia and California Have Adopted the Grace Period Approach, Which Provides Only Thirty Days to Refile Suit.

In the decision below, the D.C. Court of Appeals rejected the suspension approach and adopted the

grace period approach. The high court of California and several intermediate appellate courts reached the same conclusion as the court below.[2]

The California Supreme Court adopted the grace period approach in *City of Los Angeles v. County of Kern*, 328 P.3d 56 (Cal. 2014). The court observed that "[s]ection 1367(d) has confounded courts nationally and in California, with two near-equal camps emerging." 328 P.3d at 58. The court began by conceding that "[a]s a purely textual matter, . . . the most natural reading of the [statute] . . . is that the period's running shall be suspended, and shall restart 30 days after dismissal." *Id.* at 60. But the court noted that Congress had not specified whether the tolling abated the running of the period or its expiration, *id.* at 61, and reasoned that the suspension interpretation "could delay for years resolution of claims," *id.*

Next the California court turned to legislative history, citing an article by three professors who assisted in the drafting of § 1367 who noted Congress's intent to codify the American Law Institute's ("ALI's") recommendations. *Id.* at 62-63. In addition, the court reasoned that the grace period approach "hews most closely to a purpose of preventing the loss of claims,"

---

[2] The D.C. court observed that several federal Courts of Appeals "apparently agree" with its interpretation, *see* Pet. App. 8a, although none of those cases squarely analyzed the question. *See Hedges v. Musco*, 204 F.3d 109, 123 (3d Cir. 2000); *Seabrook v. Jacobson*, 153 F.3d 70, 72 (2d Cir. 1998); *Beck v. Prupis*, 162 F.3d 1090, 1099-1100 (11th Cir. 1998).

id. at 63, because "[t]he suspension view . . . affects limitations periods more broadly," *id.* at 64.

At this point, the court noted that because the textual analysis and the legislative history analysis suggested different results, federalism concerns must resolve the question. *Id.* Those concerns, the court reasoned, required adoption of the grace period approach, because "[i]t alters the limitations period only when necessary to prevent a time bar." *Id.* at 65.[3]

Intermediate appellate courts in Florida, North Carolina, Georgia, New Jersey, and Ohio have also adopted the grace period approach. *See Dahl v. Eckerd Family Youth Alts., Inc.*, 843 So. 2d 956, 958 (Fla. Dist. Ct. App. 2003); *Harter v. Vernon*, 532 S.E.2d 836, 839-40 (N.C. Ct. App. 2000); *Gottschalk v. Woods*, 766 S.E.2d 130, 136-38 (Ga. Ct. App. 2014); *Berke v. Buckley Broad. Corp.*, 821 A.2d 118, 123-24 (N.J. Super. Ct. App. Div. 2003); *Smith v. Erie Cty. Sheriff's Dep't*, No. E-15-028, __ N.E.3d __, 2016 WL 618112 (Ohio Ct. App. Feb. 12, 2016).

* * *

As these cases illustrate, there is a stark and acknowledged split among the lower courts on the

---

[3] The Supreme Court of the Northern Mariana Islands has also adopted the grace period approach. *Juan v. Commonwealth*, No. 99-032, 2001 WL 34883536, at *4 (N. Mar. I. Nov. 19, 2001). The Northern Mariana Islands is treated as a "State" for purposes of § 1367, *see* 28 U.S.C. § 1367(e), and its Supreme Court is treated as a State high court for purposes of this Court's certiorari jurisdiction, 48 U.S.C. § 1824(a).

meaning of § 1367(d)'s tolling provision. This case presents the Court with an ideal vehicle to resolve the split, as the outcome turns upon which of the competing interpretations is adopted: Petitioner had nearly two years remaining on her limitations clock when she filed her federal suit, and she filed her state suit fifty-nine days after dismissal of the federal suit, so her suit plainly would not have been barred under the suspension approach. The Court should grant certiorari in this case in order to harmonize these divergent interpretations of § 1367(d).

II. The Question Presented Is Important.

Review is also warranted because the question presented is an important one that goes to a basic issue of federal jurisdiction: how long does a plaintiff have to refile her state-law claw claims in the event that a federal court declines to exercise supplemental jurisdiction over them? That issue is no merely theoretical federal-courts puzzle. It arises in every case in which a district court ultimately declines to exercise supplemental jurisdiction, and it will continue to arise until it is resolved by this Court.

It is particularly important to have a definitive answer because Congress enacted § 1367(d) to "provid[e] a straightforward tolling rule" which "promotes fair and efficient operation of the federal courts and is therefore conducive to the administration of justice." *Jinks v. Richland Cty.*, 538 U.S. 456, 463 (2003) (upholding constitutionality of § 1367(d)). That interest in an "efficient," "straightforward tolling rule" is thwarted when there are two conflicting legal rules for calculating the length of the tolling period.

Congress's chosen policy regarding the effect of bringing a state law claim in federal court should not depend on the vagaries of which state is interpreting that policy. *See id.* (noting inefficiency of regime in which state courts varied on treatment of state-law claims over which federal courts declined supplemental jurisdiction).

The split also presents a significant opportunity for various permutations of forum shopping. For example, Maryland has adopted the suspension approach while the District of Columbia has adopted the grace period approach. Thus, a plaintiff who could refile a dismissed state law claim in either Maryland or the District of Columbia would choose Maryland to obtain the more favorable suspension rule. Indeed, there is already a conflict of authority between the state and federal courts in the same jurisdiction. The Sixth Circuit in *Vertrue* has adopted the suspension approach while an Ohio court in *Smith* has adopted the grace period approach.[4] *Compare Vertrue*, 719 F.3d at 481 (adopting suspension approach) *with Smith*, 2016 WL 618112, at *4 (rejecting *Vertrue* and emphasizing that "we are not bound by rulings on federal statutory or constitutional law made by a federal court other than the United States Supreme Court." (internal quotation marks omitted)). That conflict results in different statutes of limitations on state-law claims depending on whether the claim is in federal or state court, which is an

---

[4] It is unlikely this question would reach the Ohio Supreme Court, given that future plaintiffs in Ohio state court would likely acquiesce to *Smith* and file suit within 30 days of a federal dismissal.

outcome this Court has long sought to avoid. *Cf. Guar. Tr. Co. of N.Y. v. York*, 326 U.S. 99, 111 (1945) (federal courts must borrow state statutes of limitations in diversity cases because the use of lengthier federal limitations periods "would be a mischievous practice" which "would promote the choice of United States rather than of state courts in order to gain the advantage of different laws" (internal quotation marks omitted).

Section 1367 represents Congress's comprehensive attempt to address the issue of supplemental jurisdiction. This Court should ensure that this important issue is uniformly resolved in the state and federal courts around the country.

III. The D.C. Court of Appeals' Decision is Wrong.

Finally, this Court should grant review because the D.C. Court of Appeal's interpretation of § 1367(d) is contrary to the statute's plain text.

Section 1367(d) provides that "[t]he period of limitations . . . shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d). The question presented in this case boils down to what did Congress mean when it used the word "tolled"?

That question has an easy answer. "Tolled" means "suspended." Black's Law Dictionary defines "tolling statute" as "[a] law that interrupts"—*i.e.*, suspends—"the running of a statute of limitations in certain situations." *Black's Law Dictionary* 1716 (10th ed. 2014). And this Court's decisions have understood

"tolled" to mean "suspended." *CTS Corp. v. Waldburger*, 134 S. Ct. 2175, 2183 (2014) (characterizing equitable tolling as "a doctrine that 'pauses the running of, *or "tolls,"* a statute of limitations'") (emphasis added)); *Chardon*, 462 U.S. at 652 n.1 (defining "'tolling' to mean that, during the relevant period, the statute of limitations ceases to run"); *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 554 (1974) (characterizing tolling as "suspend[ing] the applicable statute of limitations.").

And if it were not obvious from that definition of "tolled," this Court has explained that when the tolling period ends, the clock re-starts from where it left off—precisely as mandated by the suspension approach. *United States v. Ibarra*, 502 U.S. 1, 4 n.2 (1991) (*per curiam*) ("Principles of equitable tolling usually dictate that when a time bar has been suspended and then begins to run again upon a later event, the time remaining on the clock is calculated by subtracting from the full limitations period whatever time ran before the clock was stopped."). Indeed, in discussing § 1367(d) in an earlier case, this Court observed that its effect was to "toll the state statute of limitations for 30 days *in addition to however long the claim had been pending in federal court.*" *Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533, 542 (2002) (emphasis added). While that discussion was dicta, it reflects the fact that the word "tolled" unambiguously means "suspend" in this context.[5]

---

[5] In *Raygor*, this Court held that Congress had not intended § 1367(d) to apply to state-law claims brought in federal court against states that had not waived sovereign immunity

In contrast, the grace period approach finds no support whatsoever in the statute's text. Even if there were some legal support for the idea that "toll" means "*continues* running" (and there is none), the notion that the statute merely extends the expiration date makes no sense in light of the phrase "while . . . and for a period of." 28 U.S.C. § 1367(d). It makes sense to talk about a *suspension* in terms of a period of time, with a start and end point; it makes no sense to speak of an *expiration* date in these terms. An expiration date occupies a single point in time. The grace period approach is simply irreconcilable with the statutory text.

The D.C. Court of Appeals did not undertake any serious analysis of the statutory text, and instead adopted the "grace period" approach based on its view that such an approach would be superior policy. Of course, the D.C. Court of Appeals had no warrant to ignore statutory text so clear; but even if the text were ambiguous, the D.C. Court of Appeals overlooked that the suspension approach has sound policy rationales.

In the first place, the House Report accompanying § 1367(d) explained that its "purpose" was not to offer a mere 30-day grace period, but "to prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations *while a supplemental claim was pending in federal court.*" H.R. Rep. No. 101-734 at 30 (1990), *as reprinted in* 1990 U.S.C.C.A.N. 6860, 6876 (emphasis added). Only the

---

where that state-law claim was dismissed on Eleventh Amendment grounds. 534 U.S. at 548.

suspension approach serves Congress's "purpose" of "toll[ing]" "while a supplemental claim was pending." *Id.*

Congress's decision was sensible given that the grace period approach has the perverse effect of treating plaintiffs who diligently file their federal claims the same as plaintiffs who wait to file suit until the last day of the limitations period: both types of plaintiffs get only 30 days after the federal court declines to exercise jurisdiction over state-law claims. And when plaintiffs diligently file federal lawsuits with time to spare on their state-law claims, there are strong reasons to give the plaintiffs more than a thirty-day grace period to refile in state court. During that time, a plaintiff must also decide whether to appeal the dismissal of her federal claim, *see* Fed. R. App. P. 4(a) (requiring appeal be filed within 30 days of final judgment). She may also be required to find a new lawyer admitted to appear in state court and to adjust her litigation strategy or assess the evidence in light of the opinion issued by the federal court. And all of this must be done while the plaintiff determines whether it is cost-effective (or whether the plaintiff even has the resources) to continue pursuing litigation. Refiling is therefore not merely a matter of swapping out the federal court case caption on the complaint with the state court case caption, as proponents of the grace period approach contend.

In short, "tolled" means "suspended," and the grace period approach comports with neither the text nor the purpose of § 1367(d).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Donald M. Temple
TEMPLE LAW OFFICES
1101 15th Street NW
Suite 910
Washington, DC 20005

Matthew S. Hellman
Adam G. Unikowsky
Counsel of Record
Mark P. Gaber
JENNER & BLOCK LLP
1099 New York Ave. NW
Suite 900
Washington, DC 20001
(202) 639-6000
aunikowsky@jenner.com

APPENDIX

Appendix A

DISTRICT OF COLUMBIA COURT OF APPEALS

Filed 4/7/16

No. 15-CV-0243

STEPHANIE C. ARTIS, APPELLANT,

v.

DISTRICT OF COLUMBIA, APPELLEE.

Appeal from the Superior Court
of the District of Columbia
(CAB-5275-14)

(Hon. Herbert B. Dixon, Jr., Trial Judge)

(Argued February 2, 2016 Decided April 7, 2016)

Donald M. Temple for appellant.

Donna M. Murasky, Senior Assistant Attorney General for the District of Columbia, with whom *Karl A. Racine*, Attorney General for the District of Columbia, *Todd S. Kim*, Solicitor General, and *Loren L. AliKhan*, Deputy Solicitor General, were on the brief, for appellee.

Before FISHER and BLACKBURNE-RIGSBY, *Associate Judges*, and PRYOR, *Senior Judge*.

PRYOR, *Senior Judge*: Appellant, Stephanie Artis, asks us to reverse the trial court's ruling on appellee's,

the District of Columbia (the District), motion to dismiss because, she argues, it misinterpreted the word "tolling" in 28 U.S.C. § 1367(d), and, as a consequence, erroneously limited her time to file her claim in Superior Court. Jurisdictions differ as to the meaning of "tolling" in 28 U.S.C. § 1367(d), and we consider the term to be ambiguous. In light of that ambiguity, we conclude that the "grace period" approach, advocated by the appellee, is more consistent with statute's context and purpose. Therefore, we affirm the judgment dismissing appellant's complaint as untimely.

I. Statement of Facts

Appellant's complaint arose from her November 15, 2010 termination from the District's Department of Health (DOH). Beginning in August 2007, appellant was employed, in a temporary status, as a DOH code inspector. A contentious relationship evolved with her supervisor, Gerard Brown, and she concluded he had singled her out for unfair treatment in the workplace. On April 17, 2009, appellant took her first administrative step against Mr. Brown and DOH by filing a discrimination claim before the U.S. Equal Employment Opportunity Commission. While that claim was pending appellant also filed a series of grievances against Mr. Brown challenging several notices of proposed infractions against her and alleging that Brown violated other employee rights regulations.

On November 15, 2010, appellant discovered that DOH terminated her temporary employment as a code inspector. In January 2011, appellant filed a final grievance alleging her termination was retaliation for

her strained relationship with the agency and Mr. Brown.

On December 16, 2011, appellant initiated a civil suit against the District in the United States District Court for the District of Columbia. Therein she alleged her termination violated Title VII of the Civil Rights Act of 1964[1] and that the District Court had supplemental jurisdiction under 28 U.S.C. § 1367(a) (1990) to hear her claims based on the District's Whistleblower Act,[2] False Claims Act,[3] and her common law claim for wrongful termination against public policy. *See Artis v. District of Columbia*, 51 F. Supp. 3d 135 (D.D.C. 2014).

On June 27, 2014, the court granted the District's motion for judgment on the pleadings as to appellant's federal employment discrimination claim. *Id.* at 139-141. The court further found that since it dismissed the sole federal claim as facially deficient, it had no basis to exercise jurisdiction over the remaining claims arising under District of Columbia law. *Id.* at 141-42 (discussing discretionary nature of pendent jurisdiction) (citing 28 U.S.C. § 1367I(3)).

On August 25, 2014, fifty-nine days after dismissal from federal district court, appellant filed her remaining claims in the Superior Court. In a motion

---

[1] 42 U.S.C. § 2000e-5 (2009).

[2] D.C. Code § 1-615.54 (2001).

[3] D.C. Code § 2-308.16 (2001) (recodified as D.C. Code § 2-381.04 (2009)).

for dismissal—or alternatively summary judgment—the District alleged appellant's claims were time barred based on the respective statutes of limitation and 28 U.S.C. § 1367(d). *Artis v. District of Columbia*, 2014-CA-005275B (January 29, 2014). The trial judge agreed, finding 28 U.S.C. § 1367(d) does not suspend state statutes of limitations at the time of the unsuccessful federal filing, but rather creates a thirty-day period for a claimant to file actions over which the U.S. District Court lacked jurisdiction. *Id.*

II. Discussion

A.

It is necessary, in order to answer the question presented in this case, to resolve the meaning of "tolled" in 28 U.S.C. § 1367(d). Appellant argues the trial court erroneously interpreted 28 U.S.C. § 1367(d)'s plain language, which provides:

> [t]he period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

There were nearly two years remaining on the statute of limitations when appellant filed her suit in the United States District Court, and she asserts she had that period (plus thirty days) to file her claims in the Superior Court.

Thus, appellant urges us to adopt the reasoning of the Maryland Court of Appeals in *Turner v. Knight*, 957 A.2d 984 (Md. 2008), and find that "tolled" means to suspend the local statute of limitations at the point the federal suit was filed. The District, relying primarily on the California Supreme Court's decision in *City of Los Angeles v. County of Kern*, 328 P.3d 56 (Cal. 2014), instead urges us to affirm the trial court's finding that, in the context of the statute's language, purpose, and history, "tolled" means a thirty-day "grace period" will apply if the limitations period for the state based claims expires while the claim is pending in the federal court. Here, according to the District, the limitations period had expired while the federal suit was pending, so appellant had only thirty days to file in Superior Court. The District argues this fulfills Congress's intent by giving a litigant an opportunity to re-file claims over which the federal court lacked jurisdiction without requiring duplicative filings or infringing on the rights of states to establish their own statutes of limitation.

When interpreting statutory language, we must "look first to the plain language of a statute to determine its meaning, and favor interpretations consistent with the plain language. . . ." *Stevens v. ARCO Management of Washington, D.C., Inc.*, 751 A.2d 995, 998 (D.C. 2000) (citing *Francis v. Recycling Solutions, Inc.*, 695 A.2d 63, 72 (D.C. 1997); *Downs v. District of Columbia Police and Firefighters Retirement and Relief Bd.*, 666 A.2d 860, 861 (D.C. 1995)). "Where the plain meaning of the statutory language is unambiguous, the intent of the legislature is clear, and judicial inquiry need go no further." *Id.*; *see*

also United States v. Goldenberg, 168 U.S. 95, 102-03 (1897) ("The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that [it] has used."). But, even if the words of a statute have "superficial clarity, a review of the legislative history or an in-depth consideration of alternative constructions that could be ascribed to statutory language may reveal ambiguities that the court must resolve." *Lincoln Hockey LLC. V. District of Columbia Dep't of Emp't Servs.*, 810 A.2d 862, 868 (D.C. 2002) (citing *Hively v. District of Columbia Dep't of Emp't Servs.*, 681 A.2d 1158, 1161 (D.C. 1996)); *see also Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983) (en banc) (if statute is ambiguous "our task is to search for an interpretation that makes sense of the statute and related laws as a whole[]"); *Dolan v. United States Postal Serv.*, 546 U.S. 481, 486 (2006) ("A word in a statute may or may not extend to the outer limits of its definitional possibilities. ").

B.

As stated, the parties have advanced two respective positions which are consistent with the competing approaches that have evolved nationally relating to the tolling provision of the statute presented. One interpretation is illustrated by *Turner*. In adopting the "suspension" approach, the *Turner* court, relying largely on the California Court of Appeal's decision in *Bonifield v. County of Nevada*, 94 Cal. App. 4th 298, 303-04 (2001) (quoting *Woods v. Young*, 807 P.2d 455, 461 (1991)), likened tolling to a "clock that is stopped

and then restarted[,]" *Turner*, *supra*, 957 A.2d at 991, and reasoned that the *Bonifield* suspension approach was more consistent with Supreme Court precedent. *Id.* at 992 (citing *Chardon v. Fumero Soto*, 462 U.S. 650, 661 (1983) (interpreting tolling statute in 42 U.S.C. § 1983 to suspend, rather than renew, limitation period)); *see also Goodman v. Best Buy, Inc.*, 755 N.W.2d 354 (Minn. App. 2008)[4]; *Oleski v. Dep't of Pub. Welfare*, 822 A.2d 120, 124 (Pa. Cmwlth. Ct. 2003).

On the other hand, a different approach is that the statute provides a thirty-day "grace period" "allowing claims that would otherwise have become barred to be pursued in state court if refiled no later than 30 days after federal court dismissal."[5] *Cf. City of Los Angeles*, *supra*, 328 P.3d at 58 (cited with approval in *Gottschalk v. Woods*, 766 S.E.2d 130, 136 (Ga. App. 2014)); *see also Weinrib v. Duncan*, 962 So.2d 167 (Ala. 2007); *Dahl v. Eckerd Family Youth Alternatives, Inc.*, 843 So.2d 956 (Fla. App. 2003); *Berke v. Buckley Broad. Corp.*, 821 A.2d 118 (N.J. Super. 2003); *Harter v. Vernon*, 532 S.E.2d 836 (N.C. App. 2000); *Juan v.*

---

[4] In *Goodman*, *supra*, 755 N.W.2d at 356-57, the Minnesota Court of Appeals also noted a third possible interpretation of the tolling provision in § 1367(d): that it served to "annul" the state statute of limitation and replace it with thirty days following the dismissal from federal district court. This position was not argued by either party and we decline to adopt it here.

[5] *See Chardon v. Fumero Soto*, 462 U.S. 650, 661 (1983) (recognizing that "tolling effects" include suspension, renewal, and extension of filing period).

Commonwealth, 2001 WL 34883536 (N. Mar. I. Nov. 19, 2001).

Additionally, federal circuit courts of appeal that have analyzed the tolling provision of § 1367(d) apparently agree that it provides a thirty-day grace period. *Hedges v. Musco*, 204 F.3d 109, 123 (3rd Cir. 2000) (finding § 1367(d) ensures plaintiff has "at least thirty days after dismissal to refile in state court") (citing *Seabrook v. Jacobson*, 153 F.3d 70, 72 (2d Cir. 1998); *see also Beck v. Prupis*, 162 F.3d 1090, 1099-1100 (11th Cir. 1998) (dismissal under § 1367 tolls statute of limitations for thirty-days)).

Turning to the legislative history, the Judicial Improvements Act of 1990 (the Act), Pub. L. No. 101-650 § 310 (Dec. 1, 1990), 104 Stat. 5089, 5113-5114, was intended to provide "just, speedy, and inexpensive resolution of civil disputes[.]" Sen. Rep. No. 101-416, 2d Sess. P. 1 (Aug. 3, 1990). As part of the Act, § 1367(d)'s purpose was "to prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations while a supplemental claim was pending in federal court." H.R. Rep. No. 101-734, 2d Sess., p. 30 (1990).

It is apparent that in drafting subsection (d) of the Act, Congress incorporated recommendations from the academic community, specifically the American Law Institute (ALI). H.R. Rep. No. 101-734, 2d Sess., pp. 15-17, 27 (1990), reprinted in 1990 U.S. Code Cong. & Admin. News, pp. 6861-6862, 6873. Thus we are convinced subsection (d) was meant to reflect the ALI's recommendation that the Act should provide litigants

relief from a time-bar to actions so long as "the state claim was (1) filed in federal court at time when it would not have been barred in state court *and* (2) refiled in state court within 30 days after dismissal, absent a longer state rule." *City of Los Angeles*, *supra*, 328 P.3d at 63 (citing Study of the Division of Jurisdiction Between State and Federal Courts (Am. Law. Inst.) (1969)).

Accordingly, we consider the grace period approach to be more consistent with the Act's legislative history and intent. And although both interpretations of the tolling provision are reasonable, we also find that the "grace period" approach better accommodates federalism concerns. We have previously held that "[i]f Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute." *Jones v. District of Columbia*, 996 A.2d 834, 842 (D.C. 2010) (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 282 (2002)). Turning to the present statute under consideration, § 1367(d) appears to invade a historic state power by altering state statutes of limitation. *See Raygor v. Regents of Univ. of Minnesota*, 534 U.S. 533, 543-44 (2002); *City of Los Angeles*, *supra*, 328 P.3d at 64. As such, we find that the "grace period" approach hazards significantly less impact on "local statutes of limitation" than the suspension approach. *Stevens*, *supra*, 751 A.2d 996; *see also Raygor*, *supra*, 534 U.S. at 542 (favoring construction of § 1367(d) with least impact on state sovereignty). Thus, not only are we satisfied that the "grace period" approach conforms

with § 1367(d)'s purpose and history, we also find it consistent with our presumption favoring narrow interpretations of federal preemption of state law. *Traudt v. Potomac Elec. Power Co.*, 692 A.2d 1326, 1332 (D.C. 1997) (scope of preemptive effective must be narrowly construed) (citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)); *see also Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005) (noting court's duty to accept reading disfavoring preemption where equally plausible to other interpretations).

This is not the first time we have been asked to interpret 28 U.S.C. § 1367(d). In *Stevens, supra*, 751 A.2d at 998-99, we reversed a trial court finding that § 1367(d) did not permit appellant to file her dismissed action in Superior Court after the district court determined it lacked subject-matter jurisdiction. There, appellant filed her underlying tort claim in Superior Court within thirty days of its dismissal from the district court, making it unnecessary for us to expressly interpret the meaning of "tolled." Nevertheless, we commented that application of § 1367(d)'s thirty day extension to the "local statute of limitations" was necessary to satisfy the statute's purpose of allowing litigants to "*economically* resolve related matters in a single forum" and "increase the *administrative efficiency* of the civil litigation process" without having to file "duplicative and wasteful protective suits in state court." *Id.* at 996 & 1002 (citations omitted) (emphasis added).

We conclude that the "grace-period" approach reflects the legislative history and intent of the Act,

conforms to our presumption against preemption, and is consistent with our previous treatment of that statute in *Stevens*. As such, we hold that the tolling provision of § 1367(d) applies a thirty-day "grace period" to allow litigants to re-file claims that otherwise would have become barred in Superior Court. Applying that rule here, we agree with the District that Ms. Artis failed to comply with the statute of limitations that governed her claims based on District of Columbia law, and affirm the ruling of the trial court.

Affirmed.

Appendix B

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

Filed 1/29/2015

STEPHANIE C. ARTIS, Plaintiff,	)	
	)	Case No. 2014 CA
v.	)	005275 B
	)	Judge Herbert B.
	)	Dixon, Jr.
DISTRICT OF COLUMBIA, Defendant.	)	

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

This matter is before the court upon Defendant District of Columbia's *Motion to Dismiss or, in the Alternative, for Summary Judgment*, in which the District argues that 1) Plaintiff Stephanie Artis' complaint is barred by the statute of limitations as she should have filed her complaint on or before July 27, 2014, and not August 25, 2014 and 2) the plaintiff's failure to timely file her affidavit of service requires her complaint to be dismissed without prejudice.

In opposition, Plaintiff Stephanie Artis counters, among other things, that 1) the plain language and reading of 28 U.S.C. § 1367(d) supports the conclusion that the applicable statute of limitations stopped tolling while her complaint was pending in federal court and

resumed tolling upon its dismissal with 30 days added to the limitations period; 2) the dismissal of the plaintiff's complaint would be inappropriate where the defendant was timely served; and 3) Defendant District of Columbia had actual knowledge of the plaintiff's lawsuit and claims in light of the parties' prior litigation in the federal court.

By way of background, on December 16, 2011, Plaintiff Stephanie Artis filed a complaint against the District of Columbia in the United States District Court for the District of Columbia bringing claims for gender discrimination in an employment context in violation of Title VII of the Civil Rights Act of 1964, retaliation in violation of the D.C. False Claims Act, violation of the D.C. Whistleblower Protection Act, wrongful discharge in violation of public policy, and intentional infliction of emotional distress. On June 27, 2014, Judge James Boasberg issued a memorandum opinion finding that "no reasonable jury could conclude that [Plaintiff] Artis was subjected to gender discrimination while employed by the District" and then dismissing the plaintiff's remaining state law claims for lack of subject-matter jurisdiction pursuant to 28 U.S.C. § 1367(c)(3), *Artis v. District of Columbia*, No. 1:11-cv-02241-JEB, 2014 U.S. Dist. LEXIS 87457, at *1 (D.D.C. June 27, 2014). Thereafter, on August 25, 2014, the plaintiff filed the underlying complaint against Defendant District of Columbia alleging violation of the D.C. Whistleblower Protection Act, wrongful discharge in violation of public policy, and retaliation in violation of the D.C. False Claims Act.

Here, the court is not persuaded that 28 U.S.C. § 1367(d) can be read to extend the limitations period of a plaintiff's dismissed claim or claims beyond 30 days after dismissal. Section 1367 generally deals with the scope and extent to which federal district courts can exercise supplemental jurisdiction over claims for which those courts ordinarily would not have original jurisdiction via a federal question (*i.e.*, 28 U.S.C. § 1331) or party diversity (*i.e.*, 28 U.S.C. § 1332). In particular, subsection (d) of 28 U.S.C. § 1367 states that the limitations period for any claim asserted under the federal courts' supplemental jurisdiction "shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period."

While the plaintiff's reading of subsection (d) stresses the language of "while the claim is pending," the court strongly believes that such a reading would only be reasonable if the plaintiff were to be barred or otherwise prevented from pursuing her state law claims in a state court while the federal court proceeding is pending. Indeed, this member of the court is not aware of any statute that would prevent a plaintiff in the District from filing a complaint in the Superior Court presenting claims duplicative to those state law claims pending before a federal court.[1]

---

[1] It is important to note that while the cross-filing of state law claims in federal court and state court (particularly the Superior Court for the District of Columbia) is not impermissible, such a cross-filing of claims is generally disfavored by courts as "wasteful" and being "against [the interests of] judicial efficiency."

Against this legal background, the court interprets the clause "while the claim is pending" to toll the applicability of a defendant's statute of limitations defense in those instances where the plaintiff subsequently proceeds to file suit in state court and the applicable limitations period has passed, yet a timely filed complaint alleging the same state law claims is pending in federal court.

Hence, should it arise that a plaintiff has not filed his state law claims in state court before the claim bestowing federal jurisdiction has been dismissed, the clause "for a period of 30 days after it is dismissed" and its attached proviso would necessarily apply. On such an occasion, § 1367(d) would only toll the limitations period for each claim for a period of 30 days after the dismissal.[2] In understanding that a statute of

---

Stevens v. Arco Mgmt. of Wash. D.C., Inc., 751 A.2d 995, 1002 (D.C. 2000).

[2] While the statutory language of § 1367(d) is not unambiguous and some states have endorsed the plaintiff's interpretation of this subsection, a survey of other jurisdictions' interpretations of this statute tends to support this court's interpretation of § 1367(d) as only providing a 30-day grace period. *See Gottschalk v. Woods*, 329 Ga. App. 730, 740 (2014) (adopting the "grace period" approach, where a plaintiff is given a 30-day grace period to re-file otherwise expired claims, "is the most appropriate interpretation of 28 U.S.C. § 1367(d)" as this interpretation is least intrusive of a state's sovereignty); *City of Los Angeles v. County of Kern*, 174 Cal. Rptr. 3d 67, 79, 328 P.3d 56, 66 (Cal. 2014) (finding that while § 1367(d) is ambiguously worded, a "grace period construction cleaves closest to the goal of avoiding the loss of claims that otherwise would be barred, while impinging least on state sovereign prerogatives to establish statutes of limitations");

limitation for a state law claim is a creature of the relevant state law, § 1367(d) expressly makes this 30-day period inapplicable where state law would

---

Weinrib v. Duncan, 962 So. 2d 167, 170 (Ala. 2007) (interpreting § 1367(d) as to toll the applicable statute of limitations for 30 days after the dismissal of the state law claims (citing *Roden v. Wright*, 611 So. 2d 333 (Ala. 1992))); *Berke v. Buckley Broad. Corp.*, 359 N.J. Super. 587, 595, 821 A.2d 118, 123-24 (App, Div. 2003) (agreeing with the grace period interpretation and finding that "the import of the statute is simply to toll the running of the state statute of limitations from its customary expiration date until the expiration of a thirty-day period following conclusion of the federal action, that is, to provide a thirty-day grace period"); *Dahl v. Eckerd Family Youth Alternatives*, 843 So. 2d 956, 958 (Fla. Dist. Ct. App. 2003) (endorsing a "grace period" interpretation of 28 U.S.C. § 1367(d)); *Juan v. Commonwealth*, 2001 MP 18, ¶ 17, 6 N.M.I. 322, 327 (holding that "§ 1367(d) gives a party no more than a 30-day window of opportunity, after dismissal from the District Court, to commence action in the Superior Court"); *Harter v. Vernon*, 139 N.C. App. 85, 91, 532 S.E.2d 836, 840, *appeal dismissed and disc. review denied*, 353 N.C. 263, 546 S.E.2d 97 (2000) (stating that pursuant to 28 U.S.C. § 1367(d), "the state period of limitations for a plaintiff's pendent state claims is tolled for a period of thirty days after the federal district court has dismissed the plaintiff's claims"). *But see Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 760 (Minn. 2010) (concluding that the only reasonable interpretation of 28 U.S.C. § 1367(d), wherein "the running of the limitations period, not merely the expiration of the limitations period, is suspended while the claim is pending in federal court and for 30 days after dismissal by the federal court" with the limitations clock resuming after the 30 days have passed); *Turner v. Kight*, 406 Md. 167, 182, 957 A.2d 984, 992-93 (Md. 2008) (holding that "§ 1367(d) must be read as adopting the suspension approach"); *Oleslci v. Dep't of Pub. Welfare*, 822 A.2d 120, 126 (Pa. Commw. Ct. 2003) (endorsing the "suspension" approach in interpreting § 1367(d)).

otherwise allow for further extension of the limitations period.

The court finds support for the District's interpretation of § 1367(d) in *Stevens v. Arco Management of Washington D.C, Inc.* 751 A.2d 995 (D.C. 2000). In that case, the plaintiff filed a complaint (including a claim of common law negligence) in federal court against the United States and an independent federal contractor. *Id.* at 996. After granting the United States' motion to dismiss, that federal court declined to exercise supplemental jurisdiction over the plaintiff's common law negligence claim concerning the independent federal contractor and thus dismissed her remaining claim. *Id.* at 996-97. As a result of this dismissal, that plaintiff filed a civil action in the Superior Court "within thirty days of the dismissal in federal court, but well beyond [the limitations period] from the date of the injury." *Id.* at 997. On appeal from the trial court's dismissal of the plaintiff's complaint on the grounds that the three-year statute of limitations had expired, the Court of Appeals reversed this dismissal, holding that "[t]he three year statute of limitations was tolled during the [pendency of the] federal case, and for thirty days following its dismissal." *Id.* at 1003.

Although the plaintiff requests that the court read § 1367(d) broader than the District does, such a broad reading is not supported by the facts, reasoning, and holding of the Court of Appeals in *Stevens*. Accordingly, upon consideration of the defendant's motion, the plaintiff's opposition, the applicable law,

and the entire record herein, it is by the court this 29th day of January 2015

ORDERED, that Defendant District of Columbia's *Motion to Dismiss or, in the Alternative, for Summary Judgment* shall be and is hereby **GRANTED**; and it is further

ORDERED, that Plaintiff Stephanie Artis' complaint shall be and is hereby **DISMISSED WITH PREJUDICE.**

/s/ Herbert B. Dixon, Jr.
Herbert B. Dixon, Jr.
Judge
(Signed in Chambers)

Copies to:

Martha J. Mullen, Esq.
Aaron J. Finkhousen, Esq.
Donald M. Temple, Esq.

Appendix C

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 15-CV-243 July 20, 2016

STEPHANIE C. ARTIS,
Appellant,

CAB5275-14

v.

DISTRICT OF COLUMBIA,
Appellee.

BEFORE, Washington, Chief Judge; Glickman, Fisher*, Blackburne-Rigsby*, Thompson, Beckwith, Easterly, and McLeese, Associate Judges; Pryor*, Senior Judge.

ORDER

On consideration of appellant's petition for rehearing or rehearing *en banc*, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing *en banc*, it is

FURTHER ORDERED that the petition for rehearing *en banc* is denied.

PER CURIAM

Copies to:

Honorable Herbert B. Dixon, Jr.

Director, Civil Actions Branch

Donald M. Temple, Esquire
Donald M. Temple, PC
1101 15th Street, NW
Suite 203
Washington, DC 20005

Todd S. Kim, Esquire
Solicitor General - DC

pii